IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Tuesday, the Fourteenth day of September, two thousand and four

Present:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P. Nos. 11536 OF 2002, 1722 OF 2003 AND 19386 OF 1999

WRIT PETITION NO. 11536 OF 2002

Between:

A.P.Subba Rao S/o Venkateswara Rao, Hindu, aged about 43 years, Occ: Secretary (under disciplinary proceedings), Primary Agricultural Co-operative Society, Yerrupalem, Yerrupalem Village and Mandal, Khammam District.

...Petitioner

And

1. The Government of Andhra Pradesh, rep.by its Secretary, Cooperation Department, Secretariat, Hyderabad.

2. The Deputy Registrar of Co-operative Societies, Khammam, Khamma District.

3. The Deputy Registrar/Officer on Special Duty, District Co-operative Central Bank Limited, Khamma, Khammam

District.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature Writ of Mandamusor any other appropriate writ declaring the action of the 2nd respondent in issuing the proceedings bearing Rc.no.1160/97-E, dated 17-9-1999 as confirmed in CTA,.no.233/1999, dt. 26-4-2002 passed by the Tribunal as illegal, arbitrary, violative of principles of natural justice and contrary to the proceedings dt. 22-1-1999.

For the Petitioner: Mr.K.Vinaya Kumar, Advocate.

For the Respondents: G.P. for Co-operation.

WRIT PETITION No. 1722 OF 2003

Between:

Yerrupalem PACS., Yerrupalem, Khammam District, rep.by its Person-in-Charge D.Smabasiva Rao S/o D.Kotaiah, aged 42 years, R/o Yerrupalem, Khammam District.

…Petitioner

And

1. The Assistant Commissioner of Labour, Khammam (Appellate Authority U/s.48 of A.P. Shops & Establishments Act).
2. A.P.Subba Rao, Ex-Secretary, C/o Venkateswara Rao, Advocate H.No.5/11/1193, Pochammakunta, Hanumakonda, Warangal District.
3. The District Co-operative Officer, Khammam, Khammam District.
4. The District Collector, Khammam.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari to call for records in S&E No.2/2002, dated 2-12-2002 on the file of the Assistant Commissioner of Labour, Khammam (Appellate Authority under Section 48 of A.P. Shops and Establishments Act, 1988) and to declare the same as illegal, wholly without jurisdiction.

For the Petitioner: Mr.D.Radha Krishna, Advocate.

For the Respondents 1, 3 & 4 : G.P. for Co-operation and Agriculture.

For respondent No.2 : Mr.K.Vinaya Kumar, Advocate.

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WRIT PETITION No. 19386 OF 1999

Between:

A.P.Subba Rao S/o Venkateswara Rao, aged 41years, Occ: Secretary (under suspension), Primary Agricultural Co-operative Society, Yerrupalem, Yerrupalem (Village and Mandal), Khammam District.

…Petitioner

And

1. The District Co-operative Officer, Khammam.
2. The Primary Agricultural Co-operative Society, Yerrupalem, rep.by its President, Yerrupalem Village and Mandal, Khamma District.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of Mandamus,

declaring the inaction of the respondents in releasing the arrears of salary i.e., (1) Medical leave from 1-4-1997 to 30-10-1997 (converted as Earned Leave as per eligibility), (2) Full Salary from 31-10-1997 to 10-5-1999, (3) Full Salary from 11-5-1999 to 22-5-1999 and also (4) 75% subsistence allowance from 22nd August, 1999, as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to release and pay the above referred amounts to the petitioner.

For the Petitioner: Mr.K.Vinaya Kumar, Advocate.

For the Respondents: G.P. for Co-operation.

The Court made the following :

COMMON ORDER:

Heard the learned counsel appearing for all the parties.

W.P.No.1722 of 2003 is filed by the Yerrupalem Primary Agricultral Co-operative Society, Khammam District against the order passed by the Appellate Authority under Section 48 of Andhra Pradesh Shops and Establishments Act, 1988 (Assistant Commissioner of Labour, Khammam) in S & E.No.2/2001 dated 2-12-2002.

The second respondent in **W.P.No.1722 of 2003** is the Ex-Secretary of the said Yerrupalem Primary Agricultural Co-operative Society. The said Ex-Secretary namely A.P.Subba Rao filed W.P.No.11536 of 2002 against the order passed by the Co-operative Tribunal, Hyderabad in C.T.A.No.233 of 1999, dated 26-4-2002 in confirming the surcharge proceedings passed in Rc.No.1160/97-E, dated 17-9-1999 under Section 60(2) of the Andhra Pradesh Co-operative

Societies Act by the Deputy Registrar of Co-operative Societies, Khammam.

Sri K.Vinaya Kumar, learned counsel appearing for the petitioner in W.P.No.11536 of 2002 submits that the surcharge proceedings passed by the Deputy Registrar of Co-operative Societies, Khammam are illegal and without conducting proper enquiry. He further submits that certain amounts paid by the petitioner was also not taken into account and though the Divisional Co-operative Officer who conducted the preliminary enquiry suggested not to fix the responsibility against the petitioner in respect of the benami loans availed by certain persons, has not been taken into account and therefore, the said surcharge proceedings passed by the Deputy Registrar of Co-operative Societies as confirmed by the Co-operative Tribunal are illegal and unsustainable. He further submits that the Writ Petition No.1722 of 2003 filed by the Primary Agricultural Co-operative Society, Yerrupalem, Khammam District against the order of the Appellate Authority under Section 48 of the Andhra Pradesh Shops and Establishments Act is not maintainable as there is an effective alternate remedy under Section 48(3) of Andhra Pradesh Shops and Establishments Act and Second Appeal lies against the said order. He further submits that as the Surcharge proceedings passed by the Deputy Registrar of Co-operative Societies as confirmed by the Co-operative Tribunal, Hyderabad, directing the petitioner in W.P.No.11536 of 2002 to pay an amount of Rs.1,51,380-22 Ps., have to be adjusted against the amounts payable to the petitioner as per the orders passed by the Assistant Commissioner of Labour, who is the authority under Section 48 of Andhra Pradesh Shops and Establishments Act, directing the petitioner to be re-instated into service with all back wages and attendant benefits.

Without filing the Second Appeal, the Society filed the Writ Petition. While admitting the Writ Petition, this Court by order dated 4-2-2003 in W.P.M.P.No.2228 of 2003 granted interim suspension to the extent of payment of back wages alone. The petitioner A.P.Subba Rao in W.P.No.11536 of 2002 whose removal order has been set

aside was reinstated into service on 8-8-2003. Now, there is no dispute as regards the reinstatement as he was re-instated into the service of the society as a Secretary and functioning as such with effect from 8-8-2003 and his salary is also being paid regularly.

On the instructions of their clients, all the learned counsel appearing for the parties have reported that both the matters have been compromised by the respective parties to the effect that the Society will not recover the surcharge amount of Rs.1,51,380-22 Ps., in lieu of the payment of the back wages and attendant benefits payable to him and requested to dispose of both the Writ Petitions in terms of the said compromise.

Having regard to the facts and circumstances of the case, both the Writ Petitions can be disposed of as all claims among the respective parties have been settled. As regards to the payment of surcharge amount is concerned, the same has been settled towards full and final payment of back wages and attendant benefits and the respective parties have no claims against each other. It is made clear that the re-instatement of the petitioner as Secretary of the Society with effect from 8-8-2003 is confirmed and he is entitled for payment of salary from 8-8-2003 alone. In view of the aforesaid settlement among the parties, the proceedings on the file of the appellate authority under Section 48 of Andhra Pradesh Shops and Establishments Act, 1988 and Assistant Commissioner of Labour, Khammam in S & E No.2/2001(File No.A/1246/2001, dated 19-3-2004) shall stand discharged.

Both the Writ Petitions are disposed of accordingly. No order as to costs.

W.P.NO.19386 OF 1999:

The petitioner filed this Writ Petition to declare the action of the respondents in not releasing the arrears of salary i.e., Medical leave

from 1-4-1997 to 30-10-1997 (converted as Earned Leave as per eligibility), full Salary from 31-10-1997 to 10-5-1999, full Salary from 11-5-1999 to 22-5-1999 and also 75% subsistence allowance from 22nd August, 1999, as illegal, arbitrary and violative of principles of natural justice and direct the respondents to release and pay the above referred amounts to him.

In view of the orders passed in W.P.Nos.11536 of 2002 and 1722 of 2003, no orders are necessary in this Writ Petition.

Accordingly, W.P. No. 19386 of 1999 is dismissed. No order as to costs.

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V.ESWARAIAH,J

Dt.14-09-2004

Shr

Asst. Registrar.

To

1. The Secretary to Government of Andhra Pradesh,
   Cooperation Department, Secretariat, Hyderabad.

4. The Deputy Registrar of Co-operative Societies, Khammam, Khamma District.

5. The Deputy Registrar/Officer on Special Duty, District Co-operative Central Bank Limited, Khamma, Khammam District.

6. The Assistant Commissioner of Labour, Khammam.

7. The District Co-operative Officer, Khammam, Khammam District.

8. The District Collector, Khammam.

9. The President, Primary Agricultural Co-operative Society, Yerrupalem, Yerrupalem Village and Mandal, Khamma District.

10. One CC to Mr.D.Radhakrishna, Advocate.

11. Two CCs to G.P., for Co-operation and Agriculture.

12. Two C.D copies.